

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 16 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LEOPOLDO OROS-RODRIGUEZ,

Defendant - Appellant.

No. 05-10457

D.C. No. CR-04-02532-JMR

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
John M. Roll, District Judge, Presiding

Argued and Submitted April 5, 2006
San Francisco, California

Before: B. FLETCHER, BEEZER and FISHER, Circuit Judges.

Leopoldo Oros-Rodriguez appeals the reasonableness of his sentence imposed following his guilty plea conviction for unlawful reentry, in violation of 8 U.S.C. § 1326. We affirm.

*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

We have jurisdiction to hear Oros-Rodriguez’s appeal, despite the government’s contrary arguments, because the Federal Sentencing Act “‘provide[s] for appeals from sentencing decisions (*irrespective of whether the trial judge sentences within or outside the Guidelines range* in the exercise of his discretionary power under § 3553(a)).’” *United States v. Plouffe*, 436 F.3d 1062 (9th Cir. 2006) (quoting *United States v. Booker*, 543 U.S. 220, 260 (2005) (citing 18 U.S.C. § 3742(a)-(b))) (original emphasis), *amended by* __ F.3d __, 2006 U.S. App. LEXIS 10042, *3 (9th Cir. Apr. 21, 2006).

Here, the district court acknowledged the advisory nature of the Guidelines, correctly calculated the Guidelines range and sentenced Oros-Rodriguez to the lower end of that range: “In considering everything in this matter, as I said, I don’t think there is a basis for Guideline departure because, considering the Guidelines as advisory and weighing everything, including your lengthy criminal history, I believe that a sentence at the low end of the Guidelines is the appropriate disposition.”

Because the court did not err in finding that the Pre-Sentence Report “reasonably addresse[d] in its totality the criminal conduct in question,” and because the court “consider[ed] everything . . . that was submitted” by Oros-Rodriguez, including newspaper articles, websites and reports on immigration, the

court did not unreasonably sentence Oros-Rodriguez when it applied the factors set forth in 18 U.S.C. § 3553(a). The district court did not abuse its discretion in finding that Oros-Rodriguez's criminal history was an important factor warranting a longer sentence, one that distinguished him from other undocumented aliens convicted of illegal reentry.

Oros-Rodriguez nevertheless argues that his sentence was disproportionately high because the district court failed to give due weight to other alleged facts: that the United States seldom prosecutes the domestic employers who lure undocumented aliens like Oros-Rodriguez to the country and profit from the low-wage labor they provide; that many Americans benefit from and exploit illegal aliens like Oros-Rodriguez; that the United States has surrendered its sovereignty over the U.S.-Mexican border and thus cannot be said to have suffered trespass by aliens like Oros-Rodriguez; and that it makes no sense to punish Oros-Rodriguez for crossing a border that time will render obsolete, once the United States, Canada and Mexico succeed in forming a supra-national North American entity. The district court properly rejected these arguments as irrelevant to Oros-Rodriguez's own conduct and did not err in considering them insubstantial with regard to 18 U.S.C. § 3553(a).

Because the district court correctly calculated the Guidelines sentence and made reasonable sentencing decisions, Oros-Rodriguez's sentence is not unreasonable.

AFFIRMED.